

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

LARRY ALLEN SLEDGE,

Plaintiff,

vs.

CAPTAIN SHAWN BOLT, ERIE COUNTY
PRISON; MITCH CARMEN, DEPUTY
WARDEN MICHAEL HOLMAN, ALL
STAFF OF ERIE COUNTY PRISON;
WARDEN KEVIN SUTTER, ERIE
COUNTY PRISON, JOSHUA HILL, PETER
BARRETT,

Defendants,

)
)
) 1:20-CV-00336-RAL
)
)
) RICHARD A. LANZILLO
) UNITED STATES MAGISTRATE JUDGE
)
)
) ORDER ON DEFENDANTS' MOTION TO
) STRIKE, OR IN THE ALTERNATIVE, FOR
) EXTENSION OF TIME
)
) ECF NO. 44
)

Presently pending is the Defendants' Motion to Strike the Plaintiff's Second Amended Complaint or, in the Alternative, for an Extension of Time to Respond. ECF No. 44. As explained below, the motion to strike is DENIED and the alternative request for an extension of time to respond is DENIED as moot.

On October 29, 2021, the Court granted the Defendants' motion to dismiss Plaintiff's original complaint without prejudice to the Plaintiff's filing of an amended pleading. *See* ECF Nos. 31, 32. Plaintiff then filed an Amended Complaint on November 16, 2021. ECF No. 34. The Defendants filed a motion to dismiss the Amended Complaint on December 20, 2021. ECF No. 37. The Court then ordered the Plaintiff to respond to the Defendants' motion. ECF No. 39. Plaintiff has done so by filing a document labeled Second Amended Complaint, a Response in Opposition to the motion to dismiss, and a Declaration by the Plaintiff. *See* ECF No. 41.

Thereafter, the Defendants filed the instant motion to strike the Second Amended Complaint, or in the alternative, for an extension of time to respond. ECF No. 44.

The Court has reviewed the pending Amended Complaint (ECF No. 34) together with the purported Second Amended Complaint (ECF No. 41). The Second Amended Complaint closely mirrors the pending Amended Complaint, adding no new allegations.¹ Compare 34, p. 3, ¶ 8 to ECF No. 41, p. 2, ¶ III(C). See also *Jackson v. Holland*, 2021 WL 1696280, at *1 (E.D. Pa. Apr. 28, 2021). Thus, the Second Amended Complaint is not a true amended pleading. Instead, the Court will construe it as a supplement to the operative amended complaint and, together with the Plaintiff's Response and Affidavit, as a collective response in opposition to the Defendants' pending motion to dismiss.

The Defendants' motion to strike or, in the alternative, for an extension of time to respond (ECF No. 41) is denied as moot. With the Plaintiff having responded to the Defendants' motion to dismiss, that motion (ECF No. 37) is now ready for disposition. The matter is taken under advisement and a decision will issue in due course.

DATED this 25th day of January, 2022.

BY THE COURT:



RICHARD A. LANZILLO
UNITED STATES MAGISTRATE JUDGE

¹ In his Affidavit or Declaration, Sledge alleges that he “recently tested positive for Covid-19 on January 16, 2022, as confirmed by Wexford Health Services Staff Member Denise Long.” ECF No. 43, ¶ 1. He asks that the Court “add this newly existing claim to the Plaintiff’s newly amended complaint.” Without deciding, the Court is skeptical that this information, without more, states a claim. To the extent they deem it necessary, however, the Defendants may file a Reply to the Plaintiff’s filings within fourteen (14) days of the date of this order.